REMARKS/ARGUMENTS

The present amendment is in response to the Office Action mailed April 10, 2003, in which Claims 1 through 10 and 12 through 15 were rejected. Applicant has thoroughly reviewed the outstanding Office Action including the Examiner's remarks and the reference cited therein. The following remarks are believed to be fully responsive to the Office Action and, when coupled with the amendments made herein, are believed to render all claims at issue patentably distinguishable over the cited references.

Claim 1 has been amended for clarification to remove the language directed to suspension, temperature and time and to include language which specifies a polyolefin layer.

Claim 7 has been amended to strike the unnecessary language "or layers."

Claim 10 has been amended to strike the language "or the intermediate layer" which has been inserted into new Claim 20.

Claim 13 has been converted to an independent claim by including limitations taken from original Claims 1 and 9.

Claim 14 has been converted to an independent claim by including limitations taken from original Claims 1 and 9.

Claim 15 has been amended to correct the dependency.

Claims 16 through 19 are new claims and are based on limitations presented in original Claim 9.

New Claim 20 re-introduces the limitation cancelled herein from Claim 10.

No claims are cancelled. Accordingly, Claims 1 through 10 and 12 through 20 are pending.

All the changes are made for clarification and are based on the application and drawings as originally filed. It is respectfully submitted that no new matter is added.

Applicant respectfully requests reconsideration in light of the above amendments and the following remarks.

WITHDRAWN REJECTIONS

With respect to Paragraphs 1 and 2 of the Office Action, the Examiner stated that the 35 U.S.C. Section 112 rejection and the obviousness-type double patenting rejections of Claims 1 through 11, presented in Paper No. 5, are withdrawn.

Applicant acknowledges these withdrawals with appreciation.

REPEATED REJECTIONS UNDER 35 U.S.C. SECTION 102

With respect to Paragraph 3 of the Office Action, the Examiner repeated the rejections of Claims 1 through 8 and 10 under 35 U.S.C. Section 102 as being anticipated by U.S. Patent No. 5,078,817 to Takagaki (hereinafter referred to as "Takagaki").

Applicant respectfully traverses these rejections.

Independent Claim 1 has been amended for clarification herein. It is respectfully submitted that Takagaki neither teaches nor suggests the present invention. Instead,

Takagaki is directed to a process for wrap-around labeling (a product very different from the in-mold labeled article of the present invention) and uses a film that is patentable distinguishable from that of the invention under consideration as claimed.

Specifically, it is respectfully submitted that Takagaki fails to teach or suggest:

An in-mold labeled, blow-molded article formed from high density polyethylene, the label being formed from a biaxially oriented polypropylene based film having a shrinkage of at least 4% in both the machine and transverse directions as measured by the OPMA shrink test, said film comprising at least one layer, said at least one layer being a polyolefin layer.

The Takagaki reference fails to teach or suggest this configuration. In fact, the structure of Takagaki's film would not be useful in the article of the present invention and vice-versa. Accordingly, Applicant respectfully requests that the Examiner's rejections under 35 U.S.C. Section 102 be reconsidered and withdrawn.

REPEATED AND NEW REJECTIONS UNDER 35 U.S.C. SECTION 103

With respect to Paragraph 4 of the Office Action, the Examiner repeated the rejections of Claims 1 through 10 under 35 U.S.C. Section 103 as being obvious over U.S. Patent No. 5,435,963 to Rackovan *et al.* (hereinafter referred to as "Rackovan *et al.*").

With respect to Paragraph 5 of the Office Action, the Examiner rejected Claims 13 through 15 under 35 U.S.C. Section 103 as being unpatentable over Rackovan *et al.*

With respect to Paragraph 6 of the Office Action, the Examiner rejected Claim 12 under 35 U.S.C. Section 103 as being unpatentable over Rackovan *et al.* in view of Takagaki.

Applicant respectfully traverses these rejections.

Applicant previously set forth that the Rackovan *et al.* reference not only fails to render the present invention obvious, but specifically *teaches away* from the present invention. The Examiner appears not to have seen this argument in the light seen by Applicant. Accordingly, Applicant will now more completely consider this distinction.

According to the present invention, a certain degree of shrinkage is advantageous in the in-mold labeling process. Specifically, a certain degree of shrinkage is employed in the present invention to avoid blisters in the blow molding process. Rackovan *et al.* do not suggest or teach that moderate shrinkage is helpful to avoid blisters. In fact, and very contrarily, Rackovan *et al.* clearly set forth that shrinkage of the label is a measure to be avoided. This situation is clearly contrary to that of the present invention.

While it may be true that Rackovan *et al.* teach that unbalanced shrinkage will lead to curl which is undesirable, it is still the clear teaching of Rackovan *et al.* that it is necessary to make the film in such a manner that the shrinkage is as low as possible:

> The invention contemplates combining a plurality of at least two laminae of film-forming resin..... The laminae may comprise coextruded layers which are processed together to form the label film..... The film is preferably uniaxially stretched and thereby uniaxially oriented in the machine direction. However, it is contemplated that the film may be stretched in both the machine and cross directions to be thereby biaxially oriented. In such case, the degree of stretch in the machine direction

> should exceed that in the cross direction (our stretching is certainly different we stretch more in cross direction than in lengthwise direction) so as to give a greater degree of stretch (and stiffness) in the machine direction. The invention involves the concepts, alone or in combination, of (1) hot-stretching or orienting and annealing or heat-setting the coextruded label film or ....., (2) thickness-wise balancing of the heat-shrinkability of the extruded layers or laminae so as to minimize curling, and (3) providing an antistat agent in the charge for the adhesive-containing layer or lamina. (Rackovan *et al.*, col. 3, lines 50 to 65)

Furthermore, the teaching on how to hot stretch and how to anneal the film continues:

> .... Hot-stretching is performed at a temperature equal to or above the softening temperature of the film and provides film orientation. Such temperature may exceed the activation or softening temperature of the adhesive. Annealing may similarly involve a processing temperature exceeding the adhesive activation temperature. The in-mold label film material should be annealed at a temperature sufficiently above the expected service temperature to avoid shrinking, relaxing or any distortion of the film which may interfere with the in-mold labeling process. The annealing temperature of the film material is therefore equal to or higher than the temperature at which the heat-activated adhesive is eventually to be activated by contact with the workpieces... (Rackovan *et al.*, col. 4, lines 58 to 68)

And further:

> In the particular example described, the stock now continues on its way at the rate of 75 feet per minute. As it leaves the pull-roll pair 31, 32, the stretched stock is subject to severe shrinkage if it is heated while under little or no mechanical constraint. The plastic stock is said to have a "memory" of its original length to which it tends to return when heated. The stock is cured or annealed to remove this tendency by applying heat to the tensioned stock at the annealing roll 36 ... (Rackovan *et al.*, col. 6, lines 1 through 10)

It is clear that Rackovan *et al.* can only be said to *teach away* from the present invention as claimed and thus Applicant respectfully submits that this reference should not be applied in the present case. The patent to Rackovan *et al.* must be considered as a whole, including that portion which *teaches away* from the invention as presently claimed. Along these lines the Examiner's attention is drawn to *In re Geisler*, 116 F. 3d 1465, 43 USPQ2d 1362 (Fed. Cir. 1997). Applicant submits that the patent to Rackovan *et al.* does not render the present invention as claimed obvious.

Accordingly, Applicant respectfully requests that the Examiner's rejections under 35 U.S.C. Section 103 be reconsidered and withdrawn.

ENTRY OF AMENDMENT AFTER FINAL

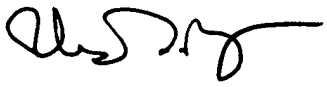
It is respectfully submitted that the present amendment should be entered in accordance with the provisions of 37 C.F.R. Section 1.116 on the grounds that: (1) The claims as now presented are in better form for appeal purposes, if necessary; (2) no new issues have been raised; (3) and, moreover, the present amendment is believed to place the application in condition for allowance.

CONCLUSION

In light of the above amendments and remarks, Applicant respectfully submits that all pending claims as currently presented are in condition for allowance. If, for any reason, the Examiner disagrees, please call the undersigned attorney at 202-624-3947 in an effort to resolve any matter still outstanding *before* issuing another action. The undersigned attorney is confident that any issue which might remain can readily be worked out by telephone.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,



Thomas T. Moga
Registration No. 34,881
Attorney for Applicant

DICKINSON WRIGHT PLLC
1901 L Street, N.W., Suite 800
Washington, D.C. 20036
202-457-0160

Dated: **August 11, 2003**

TTM/hs